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PRINCIPLES OF ANTHROPOLOGY AND SOCIOLOGY IN THEIR RELATIONS TO CRIMINAL PROCEDURE. By MAURICE PARMALEE, M. A. New York: THE MACMILLAN CO. 1908. pp. 410.

This volume—one of the "Citizen's Library"—reviews the main changes in criminal procedure during the last two centuries, and pleads for further ones, in general accordance with the theories of the Italian school, of which Lombroso was the founder, proceeding on the principle of "social defense" (pp. 4, 104). Crime, though the author sedulously avoids the task of definition (p. 97), he seems to regard as action contrary to social order and the current standards of good conduct. Criminal procedure he does venture to define, and declares to be "a process by means of which the class called criminal is separated from the rest of society" (p. 7). Here the class is put forward as the main object of consideration, but the book is mainly occupied with a denunciation of any system of procedure which does not rest on individualism, and particularly on individualization of punishment (pp. 108, 212). The "classical" school of penologists would treat the criminal according to the character of his crime; the "positive" or Lombroso school would treat him according to his own character (p. 17). Criminal procedure segregates in order to ascertain who are in need of penal treatment (p. 22). It looks, in each case, for instance, through the juridicial figure of theft to see if kleptomania does not reside within. Most habitual criminals, indeed, may be ranked in the class of occasional criminals, the occasion in each case of lapse being the persistence of their childish savagery, because unrepressed in their earlier years by the group of circumstances within which they found themselves (p. 44), and probably aggravated by drink, and confirmed through contamination by corrupt associates in jail or stupefaction in solitary cells (p. 62). Proceeding another step, the positive school tells us that there is a dynamic regularity in the annual proportion of crimes in any given social sphere. Penalties do not reduce it, but "equivalents of punishments" may. These are such as the influences of education, economics, religion, and home may supply. They cannot exterminate crime, and so there will be a residuum incurable, and therefore to be removed by eliminating the criminal from social contact (p. 67). We are to become scientific criminologists only by adding to what anatomy can teach us of the exterior structure of the so-called criminal, the revelations of biology and sociology.

Put in terms of practice, courts of justice should look for aid to experts, who can read the mind of the accused by the "hydrosphygmograph," and tell in terms of millimeters how his blood was quickened when his attention was directed to the circumstances of the crime (p. 87). Achievements already made by the new school in detecting criminals are mentioned. To cite but one: A girl was ravished and infected with syphilis. Six men were accused. Lombroso was called in. He picked out at once one of them having a sinister physiogomy, obscene tatoo marks on his arm, and traces of recent syphilis (p. 89), who made a full confession. It would seem to one, not a positivist, that the traces of syphilis might have been discovered by any competent physician, and that no reconstitution of criminal procedure was necessary to make them pertinent as tending to show guilt. Our author, however, remarks that while it is true that in

the law of evidence "are recorded the empirical results from the observation of witnesses," they have not yet been subjected to the criticism of modern psychology (p. 91).

He ranges himself essentially with those who deny the freedom of the will, or power of moral liberty (p. 112). Nobody claims that the protist has it. We have been evolved from the protist. Therefore we have not got it. Q. E. D. (p. 109). Had we, it would have been an exception to the law of the conservation of energy, and so go to "destroy the foundation to modern science" (p. 110).

But while "judgment is a mechanical process, admitting no freedom of choice" (p. 111), and moral guilt is no cause for social punishment, the criminal is still "a phenomenon of individual and social pathology" (p. 115), and biology can permit his elimination and repression, because these are social forms of natural selection and adaptation (p. 125).

The United States moved early in the direction of trying to reform the criminal, but not by any method "inspired by scientific ideas" (p. 143).

The author describes and approves the German practice of requiring the Judges, on acquitting one charged with crime, to decide whether his arrest was so wholly unjustifiable as to call for indemnity from the public treasury (pp. 242, 271); the Italian plan of providing means of instruction in scientific police methods (p. 249); the French mode of identification known as the *portrait parle,* consisting of a description of certain features of the physiognomy (p. 253); and the Eastern and English mode based on records of finger-prints (p. 254). The defense of criminals by a public officer is advocated, and the refusal to accept a plea of guilty (p. 277).

The author inclines to long words, and phraseology of a foreign cast. His treatise contains little that is not a reproduction of what has been written by European jurists and anthropologists, particularly those of Italy, Germany, England, and France. Spanish books apparently were not consulted. Thus, in speaking of the selection of medical experts, he does not allude to the views expressed by Professor Dorado of the University of Salamanca in his important treatise on *Los Peritos Medicos y La Justicia Criminal,* published in 1906.

It may be said, in general, that the author writes from the view point of a *doctrinaire* and evidently lacks familiarity with the practice of his own country in criminal cases. Thus, it is stated (p. 353) that in legal theory the testimony of one witness is as good in quality as that of another. Nothing could be farther from the truth.

TREATY-MAKING POWER UNDER THE CONSTITUTION OF THE UNITED STATES. By ROBERT T. DEVLIN. San Francisco: BANCROFT-WHITNEY CO. 1908. pp. lxx, 866.

The author is correct in characterizing the treaty power as among the powers of first importance granted to the Federal government by the Constitution. Along with such works as "Treaties in Force," Snow's "Cases in International Law" and Moore's "Digest," this work contributes valuable material for the student of public and private law. The author points out how vague and uncertain are legislative acts and treaties